

HOUSE BILL 2378

By McCormick

AN ACT to amend Tennessee Code Annotated, Title 71,  
Chapter 5, relative to the Medicaid False Claims  
Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated Section 71-5-182(a), is amended by deleting the subsection in its entirety and substituting instead the following language:

(a) Subject to subdivision (2), any person who:

(1)

(A) Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval under the medicaid program;

(B) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim to get a false or fraudulent claim under the medicaid program paid for or approved;

(C) Conspires to commit a violation of subsection (A), (B), or (D);

or

(D) Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money, or property to the state, or knowingly conceals, or knowingly and improperly, avoids, or decreases an obligation to pay or transmit money or property to the state, relative to the medicaid program;

is liable to the state for a civil penalty of not less than five thousand dollars (\$5,000) and not more than twenty-five thousand dollars (\$25,000), adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note;

Public Law 101-410), plus three (3) times the amount of damages which the state sustains because of the act of that person.

(2) However, if the court finds that:

(A) The person committing the violation of this subsection (a) furnished officials of the state responsible for investigating false claims violations with all information known to such person about the violation within thirty (30) days after the date on which the defendant first obtained the information;

(B) The person fully cooperated with any state investigation of such violation; and

(C) At the time such person furnished the state with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under §§ 71-5-181 through 71-5-186 with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation;

The court may assess not less than two (2) times the amount of damages which the state sustains because of the act of the person.

(3) A person violating this subsection (a) shall also be liable for the costs of a civil action brought to recover any such penalty or damages.

SECTION 2. Tennessee Code Annotated Section 71-5-182(c), is amended by deleting the subsection in its entirety and substituting instead the following language:

(c) "Claim" means any request or demand, whether under a contract or otherwise, for money or property and whether or not the state has title to the money or property, that is presented to any employee, officer, or agent of the state, or is made to any contractor, grantee, or other recipient, if the money or property is to be spent or

used on the state's behalf or to advance a state program or interest, and if the state provides or has provided any portion of the money or property requested or demanded; or if the state will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and does not include requests or demands for money or property that the state has paid to an individual as compensation for state employment or as an income subsidy with no restrictions on that individual's use of the money or property.

SECTION 3. Tennessee Code Annotated Section 71-5-182(d), is amended by deleting the subsection in its entirety and substituting instead the following language as a new subsection (d):

(d) "Obligation" means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment.

SECTION 4. Tennessee Code Annotated Section 71-5-182(e), is amended by deleting the subsection in its entirety and substituting instead the following language as a new subsection (e):

(e) "Material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

SECTION 5. Tennessee Code Annotated Section 71-5-182, is hereby amended by adding the following language as a new subsection (f):

(f) Any person who engages, has engaged or proposes to engage in any act described by subsection (a) may be enjoined in any court of competent jurisdiction in an action brought by the attorney general. The action shall be brought in the name of the state and shall be granted if it is clearly shown that the state's rights are being violated

by such person or entity and the state will suffer immediate and irreparable injury, loss or damage pending a final judgment in the action, or that the acts or omissions of such person or entity will tend to render such final judgment ineffectual. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent any act described by subsection (a) by any person or entity, or as may be necessary to restore to the Medicaid program any money or property, real or personal, which may have been acquired by means of such act.

SECTION 6. Tennessee Code Annotated Section 71-5-183(e), is amended by deleting the subsection in its entirety and substituting instead the following language:

(e)

(1) In no event may a person bring an action under subsection (b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil monetary penalty proceeding in which the state is already a party.

(2)

(A) The court shall dismiss an action or claim under this section, unless opposed by the state, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed in a criminal, civil, or administrative hearing in which the state or its agent is a party; in a state legislative, State Comptroller, or other state report, hearing, audit, or investigation; or from the news media, unless the action is brought by the attorney general and reporter or district attorney general or the person bringing the action is an original source of the information.

(B) For purpose of this subdivision (e)(2), "original source" means an individual who either prior to a public disclosure under subdivision

(e)(2)(A) has voluntarily disclosed to the state the information on which allegations or transactions in a claim are based; or who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the state before filing an action under this section.

SECTION 7. Tennessee Code Annotated Section 71-5-183(g), is amended by deleting the subsection in its entirety and substituting instead the following language:

(g) Any employee, contractor, or agent who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, or agent on behalf of the employee or associated others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee, contractor, or agent whole. The relief shall include reinstatement with the same seniority status the employee, contractor, or agent would have had but for the discrimination, two (2) times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees. An action under this subsection may be brought in the appropriate court for the relief provided in this subsection (g), but may not be brought more than 3 years after the date when the retaliation occurred.

SECTION 8. Tennessee Code Annotated Section 71-5-184, is hereby amended by adding the following language as a newly designated subsection (c) and redesignating the current subsections accordingly:

(c) If the state elects to intervene and proceed with an action brought under § 71-5-183(b), the state may file its own complaint or amend the complaint of a person

who has brought an action under § 71-5-183(b) to clarify or add detail to the claims in which the state is intervening and to add any additional claims with respect to which the state contends it is entitled to relief. For statute of limitations purposes, any such state pleading shall relate back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the state arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of that person.

SECTION 9. This act shall take effect upon becoming law, the public welfare requiring it.